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UNITED NATIONS CONFERENCE ON THE
LIABILITY OF OPERATORS OF TRANSPORT
TERMINALS IN INTERNATIONAL TRADE
Vienna, 2-19 April 1991

REPORT OF THE FIRST COMMITTEE

I. INTRODUCTION

A. Submission of the report

1. The Conference at its third plenary meeting entrusted the First Committee with the consideration of articles 1 to 16 and 20 of the draft Convention on the Liability of Operators of Transport Terminals in International Trade (A/CONF.152/5).

2. The present document contains the report of the First Committee to the Conference on its consideration of the draft articles referred to it, and of other proposals made to the First Committee during its deliberations.

B. Election of officers

3. At its third plenary meeting on 3 April 1991, the Conference unanimously elected Mr. Jean Paul Beraudo (France) as Chairman of the First Committee. On 5 April 1991, at the 6th meeting of the First Committee, Mr. Mahmoud Soliman (Egypt) was elected Vice-Chairman of the First Committee and Mr. Abbas Safarian Nematabad (Iran) was elected Rapporteur.

C. Meetings, organization of work and structure of this report

(i) Meetings

4. The First Committee held 18 meetings, between 3 April 1991 and 16 April 1991.

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(ii) Organization of work

5. At its first meeting on 3 April 1991, the First Committee adopted as its agenda the provisional agenda contained in A/CONF.152/C.1/L.1.

6. The First Committee proceeded mainly by way of an article-by-article discussion of the draft articles before it and of the amendments to those draft articles submitted by representatives during the Conference. The articles were considered in the following order: article 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 2, 13, 14, 20. After initial consideration of an article and amendments by the First Committee, and subject to the decisions taken on those amendments, the article was referred to the Drafting Committee. After consideration of the report of the Drafting Committee to the First Committee on the articles referred to the Drafting Committee, the First Committee referred to the Plenary the articles considered by it.

(iii) Plan of this report

7. This report describes the work of the First Committee relating to each article before it, in accordance with the following scheme:

(a) Text of the draft article as prepared by the United Nations Commission on International Trade Law (UNCITRAL);

(b) Texts of amendments, if any, with a brief description of the manner in which they were dealt with;

(c) Proceedings of the First Committee, subdivided as follows:

(i) Meetings
(ii) Consideration of the article.

II. CONSIDERATION BY THE FIRST COMMITTEE OF THE DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

Article 1

A. UNCITRAL text

8. The text as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 1

"Definitions

"In this Convention:

"(a) Operator of a transport terminal (hereinafter referred to as 'operator') means a person who, in the course of his business, undertakes to take in charge goods involved in international carriage in order to perform or to procure the performance of transport-related services with respect to the

goods in an area under his control or in respect of which he has a right of access or use. However, a person shall not be considered an operator whenever he is responsible for the goods under applicable rules of law governing carriage;

"(b) Where goods are consolidated in a container, pallet or similar article of transport or where they are packed, 'goods' includes such article of transport or packaging if it was not supplied by the operator;

"(c) 'International carriage' means any carriage in which the place of departure and the place of destination are identified as being located in two different States when the goods are taken in charge by the operator;

"(d) 'Transport-related services' includes such services as storage, warehousing, loading, unloading, stowage, trimming, dunnaging and lashing;

"(e) 'Notice' means a notice given in a form which provides a record of the information contained therein;

"(f) 'Request' means a request made in a form which provides a record of the information contained therein."

B. Amendments

9. Amendments to article 1 were submitted by Germany (A/CONF.152/C.1/L.6), Japan (A/CONF.152/C.1/L.19), Netherlands (A/CONF.152/C.1/L.23), the United States of America (A/CONF.152/C.1/L.4; A/CONF.152/C.1/L.5), Belgium (A/CONF.152/C.1/L.29; A/CONF.152/C.1/61), Sweden (A/CONF.152/C.1/L.28), United Kingdom (A/CONF.152/C.1/L.37) the ad hoc Working Group (A/CONF.152/C.1/L.44/Rev.1) and Australia (A/CONF.152/C.1/L.56/Rev.1).

10. Those amendments were to the following effect:

Subparagraph (a)

(i) Germany (A/CONF.152/C.1/L.6, paragraph 1):
Re-word the first sentence of subparagraph (a) as follows:

"'Operator' means a person who, in the course of his business, undertakes to take in charge or to handle goods involved in international carriage in order to perform or to procure the performance of transport-related services with respect to the goods in an area under his control or in respect of which he has a right of access."

[Withdrawn: see Consideration, 12, below.]

(ii) Japan (A/CONF.152/C.1/L.19):
Re-word the second sentence of subparagraph (a) as follows:

"However, a person shall not be considered an operator whenever he is responsible as a carrier or multimodal transport operator for the goods under applicable rules of law governing carriage;"

[Rejected: see Consideration, 14, below;
Resubmitted and rejected: see Consideration, 17, below.]

(iii) Netherlands (A/CONF.152/C.1/L.23):
Replace the second sentence of subparagraph (a) with the following:

"However, a person shall not be considered an operator whenever rules of law governing carriage are applicable to him."

[Withdrawn: see Consideration, 15, below.]

(iv) Germany (A/CONF.152/C.1/L.6, paragraph 2):
Re-word the second sentence of subparagraph (a) as follows:

"However, a person shall not be considered an operator whenever he is responsible for the goods under applicable rules of law governing carriage or forwarding."

[Withdrawn: see Consideration, 15, below.]

(v) Belgium (A/CONF.152/C.1/L.29):
Amend the first sentence of subparagraph (a) to read as follows:

"'Operator of a transport terminal' (hereinafter referred to as 'operator') means a person who, in the course of his business, undertakes to take in charge goods involved in international carriage in order to perform or to procure the performance of transport-related services with respect to the goods either in an area under his control or in an area in respect of which he has a right of access or use, provided that he is in a position to exercise effective control over the goods there."

[Not considered by the First Committee: see Consideration, 16, below.]

(iv) Belgium (A/CONF.152/C.1/L.61):

Replace the phrase "under his control or in respect of which he has a right of access or use" in the first sentence of subparagraph (a) by the phrase "in which he has the possibility to exercise effective control".

[Rejected: see Consideration, 17, below.]

Subparagraph (b)

United States of America (A/CONF.152/C.1/L.4):
Add wording to subparagraph (b) so that the subparagraph would read as follows:

"Where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, 'goods' includes such article of transport or packaging if it was not supplied by the operator; empty containers, in a storage yard for empty containers, are not defined as goods;"

[Withdrawn: see Consideration, 18, below.]

Subparagraph (c)

(i) Germany (A/CONF.152/C.1/L.6, paragraph 3):
Re-word subparagraph (c) as follows:

"'International carriage' means any carriage in which the place of departure and the place of destination are identified as being located in two different States when the operator takes the goods in charge or takes them over for handling;"

[Withdrawn: see Consideration, 19, below.]

(ii) Netherlands (A/CONF.152/C.1/L.23):
Insert, after the words "in which", the words "according to the contract of carriage", so that subparagraph (c) would read as follows:

"'International carriage' means any carriage in which according to the contract of carriage the place of departure and the place of destination are identified as being located in two different States when the goods are taken in charge by the operator;"

[Withdrawn: see Consideration, 19, below.]

New sentence

Germany (A/CONF.152/C.1/L.6, paragraph 4):
Add the following new sentence at an appropriate place in article 1:

"If goods are accompanied by an international transport document which is known to the operator, such goods shall be deemed to be involved in international carriage; if goods are accompanied by a domestic transport document which is known to the operator, such goods shall be deemed not to be involved in international carriage."

[Rejected as orally amended: see Consideration, 20, below.]

Subparagraph (d)

Netherlands (A/CONF.152/C.1/L.23):
Replace subparagraph (d) by the following:

"(d) 'Transport-related services' means services involving physical handling of goods such as storage, warehousing, loading, unloading, stowage, trimming, dunnaging and lashing."

[Rejected: see Consideration, 21, below.]

New subparagraphs

(i) United States of America (A/CONF.152/C.1/L.5):
Add the following in a new subparagraph of article 1:

"'Writing' includes electronic writing."

[Withdrawn: see Consideration, 23, below.]

(ii) Sweden (A/CONF.152/C.1/L.28):
Add the following in a new subparagraph of article 1:

"'Carrier' means a person who performs or procures the performance of a contract of carriage, including his servants, agents and other persons engaged by him for the performance of the contract of carriage."

[Submitted to ad hoc Working Group: see Consideration, 24, below.]

(iii) Ad hoc Working Group (A/CONF.152/C.1/L.44/Rev.1):
Add the following in a new subparagraph of article 1:

"'Carrier' means a person being a carrier by virtue of an international convention or relevant national law covering carriage of goods."

[Rejected: see Consideration, 25, below.]

(iv) Australia (A/CONF.152/C.1/L.56/Rev.1):
Add the following in a new subparagraph of article 1:

"'Carrier' means a person who is a carrier by virtue of an international convention on the carriage of goods or a national law implementing or [based on] [derived from] and corresponding with such a convention, but not a non-carrying intermediary unless he shares all the relevant rights and liabilities of a carrier under such a convention or national law."

[Rejected: see Consideration, 25, below.]

(v) United Kingdom (A/CONF.152/C.1/L.37):
Add the following in a new subparagraph to article 1:

"'Person' means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions."

[Rejected: see Consideration, 26, below.]

C. Proceedings in the First Committee

(i) Meetings

11. The First Committee considered article 1 at its 1st, 2nd, 3rd, 5th, 7th, 11th, 15th and 16th meetings on 3, 4, 6, 8, 10 and 12 April 1991, respectively.

(ii) Consideration

Subparagraph (a)

12. At the 1st meeting, the amendment proposed by Germany (A/CONF.152/C.1/L.6, paragraph 1) was withdrawn.

13. At the 2nd meeting, Germany submitted an oral proposal to amend the second sentence of subparagraph (a) as follows:

> "However, a person shall not be considered an operator whenever he is a carrier."

14. This proposed amendment was adopted by 15 votes in favour and 3 against and referred to the Drafting Committee. The adoption of the amendment implied the rejection of the amendment proposed by Japan (A/CONF.152/C.1/L.19; see, also, paragraph 17, below.)

15. At the 2nd meeting, the amendments proposed by Netherlands (A/CONF.152/C.1/L.23) and Germany (A/CONF.152/C.1/L.6, paragraph 2) were withdrawn.

16. The amendment proposed by Belgium (A/CONF.152/C.1/L.29), which was submitted after the First Committee had adopted subparagraph (a), was not considered by the Committee, as a motion pursuant to Rule 33 of the Rules of Procedure of the Conference to reconsider subparagraph (a) was rejected at the third meeting by 16 votes in favour, 12 against and 6 abstentions, and thus failed to receive a majority of two-thirds.

17. At the 15th meeting, a motion to reconsider subparagraph (a) was adopted by 16 votes in favour, 6 against and 10 abstentions. Upon reconsideration of subparagraph (a) at the 16th meeting, the amendment proposed by Belgium (A/CONF.152/C.2/L.61) was rejected by 11 votes in favour, 11 against and 6 abstentions; the amendment proposed by Japan (A/CONF.152/C.1/L.19) was resubmitted and was rejected by 8 votes in favour, 8 against and 12 abstentions. An oral proposal was submitted that the decision to amend the second sentence of subparagraph (a) (see paragraphs 13 and 14, above) should be reversed, and that the second sentence should read as it was set forth in the UNCITRAL text, namely, "However, a person shall not be considered an operator whenever he is responsible for the goods under applicable rules of law governing carriage". That proposal was adopted by 12 votes in favour, 8 against and 8 abstentions.

Subparagraph (b)

18. At the 2nd meeting, the amendment proposed by the United States of America (A/CONF.152/C.1/L.4) was withdrawn.

Subparagraph (c)

19. At the 2nd meeting, the amendment proposed by Germany (A/CONF.152/C.1/L.6, paragraph 3) was withdrawn in consequence of its withdrawal of a prior proposal (A/CONF.152/C.1/L.6, paragraph 1) (see paragraph 12, above). The amendment proposed by Netherlands (A/CONF.152/C.1/L.23) was withdrawn.

New sentence

20. At the 2nd meeting, the new sentence proposed by Germany to be added to an appropriate place in article 1 (A/CONF.152/C.1/L.6, paragraph 4) was orally amended to read as follows:

> "If goods are accompanied by an international transport document which is known to the operator, it shall prima facie be presumed that such goods are involved in international carriage."

The proposal as amended was rejected by 5 votes in favour, 25 against and 1 abstention.

Subparagraph (d)

21. At the third meeting, the amendment proposed by Netherlands (A/CONF.152/C.1/L.23) was rejected by 3 votes in favour, 11 against and 3 abstentions.

Subparagraph (e) and (f)

22. At the third meeting, Germany orally proposed the deletion of subparagraphs (e) and (f). The proposal was rejected by 6 votes in favour, 18 against and 3 abstentions.

New subparagraphs

23. At the third meeting, the amendment proposed by the United States of America (A/CONF.152/C.1/L.5) was withdrawn. The Drafting Committee was requested to take the proposal into account by ensuring that electronic writing was covered by provisions of the Convention relating to writing, requests and notices.

24. The amendment proposed by Sweden (A/CONF.152/C.1/L.28) was referred to an ad hoc Working Group. The Working Group was requested to consider whether it was necessary to provide a definition of "carrier" and, if so, to formulate a definition.

25. At the 15th meeting, the Committee decided that a definition of "carrier" should not be added to article 1. The vote of the Committee was 8 votes in favour of adding a definition of "carrier", 17 votes against and 6 abstentions. Accordingly, the proposals of the ad hoc Working Group (A/CONF.152/C.1/L.44/Rev.1) and Australia (A/CONF.152/C.1/L.56/Rev.1) were rejected.

26. At the 7th meeting, consideration of the amendment proposed by the United Kingdom (A/CONF.152/C.1/L.37) was deferred until the consideration of article 4 by the Committee. At the 11th meeting, the amendment was rejected by 5 votes in favour, 24 against and 4 abstentions.

27. The UNCITRAL text for article 1 was adopted and referred to the Drafting Committee.

New article

28. The United Kingdom submitted a proposal (A/CONF.152/C.1/L.31) to include the following new article at an appropriate place in the Convention:

"Notification that goods are involved in international carriage

"(1) A carrier or other person having an interest in the goods may provide the operator with a notice indicating that the goods are involved in international carriage.

"(2) Written acknowledgement by the operator of receipt of a notice provided under paragraph (1) of this article shall be taken as prima facie evidence that the terms of this Convention will apply to the goods when the operator takes them in charge."

29. The United Kingdom subsequently replaced that proposal by a proposal to amend article 4 (A/CONF.152/C.1/L.43), which sought to incorporate the features of the proposal that was replaced. The text of the proposal to amend article 4, and a description of the manner in which it was dealt with by the First Committee, is set forth below in the section dealing with article 4 (see paragraphs 40 and 42, below).

A. UNCITRAL text

30. The text as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 3

"Period of responsibility

"The operator shall be responsible for the goods from the time he has taken them in charge until the time he has handed them over to or has placed them at the disposal of the person entitled to take delivery of them."

B. Amendments

31. Amendments to article 3 were submitted by Germany (A/CONF.152/C.1/L.9), Belgium (A/CONF.152/C.1/L.33), Finland (A/CONF.152/C.1/L.36), Mexico (A/CONF.152/C.1/L.34) and the United Kingdom (A/CONF.152/C.1/L.38).

32. Those amendments were to the following effect:

(i) Germany (A/CONF.152/C.1/L.9):
Re-word article 3 as follows:

"The operator shall be responsible for the goods from the time he has taken them in charge or has taken them over for handling until the time he has handed them over to or has placed them at the disposal of the person entitled to take delivery of them."

[Withdrawn: see Consideration, 34, below.]

(ii) Belgium (A/CONF.152/C.1/L.33):
Re-word article 3 as follows:

"The operator shall be responsible for the goods from the time he has taken them in charge until the time he has handed them over to the person entitled to take delivery of them, provided that person takes delivery of them within a period of 30 days or within the period stipulated in the contract or until such time as he has placed them at the disposal of that person."

[Rejected: see Consideration, 34, below.]

(iii) Finland (A/CONF.152/C.1/L.36):
Add at the end of article 3 the following words:

[Alternative 1] "and given notice thereof to that person".

[Alternative 2] "and that person has received notice thereof".

[Alternative 1 withdrawn; alternative 2 rejected as orally amended: see Consideration, 35, below.]

(iv) Mexico (A/CONF.152/C.1/L.34):
Add a new paragraph (2) as follows:

"(2) [Unless there has been no negligence on his part] when the operator is obliged to take the goods in charge, the period of his responsibility shall commence at the moment when the goods are delivered to him."

[Corrected (in English version) and withdrawn: see Consideration, 36, below.]

(v) United Kingdom (A/CONF.152/C.1/L.38):
Replace the text of article 3 by the following:

"The operator shall be responsible for the goods from the time the carrier or other person delivers them into his [sole] charge until such time as the operator hands them over to the carrier or other person entitled to collect them."

[Withdrawn: see Consideration, 37, below.]

C. Proceedings in the First Committee

(i) Meetings

33. The First Committee considered article 3 at its 4th and 7th meetings on 4 and 8 April 1991.

(ii) Consideration

34. At the fourth meeting, the amendment proposed by Germany (A/CONF.152/C.1/L.9) was withdrawn in consequence of the withdrawal of its proposed amendment to article 1(a) (A/CONF.152/C.1/L.6, paragraphs 1 and 3; see paragraphs 12 and 19, above). The amendment proposed by Belgium (A/CONF.152/C.1/L.33) was rejected by 3 votes in favour, 26 against and 1 abstention.

35. With respect to the alternative amendments proposed by Finland (A/CONF.152/C.1/L.36), alternative 1 was withdrawn. Alternative 2 was orally amended by the United Kingdom to read as follows: "and has given or made reasonable attempts to give prior notice thereof to that person", and was rejected by 8 votes in favour, 22 against and 3 abstentions.

36. The amendment proposed by Mexico (A/CONF.152/C.1/L.34) was corrected, in its English version, by replacing the words "delivered to him" at the end of the amendment with the words "placed at his disposal". The proposed amendment was withdrawn.

37. At the seventh meeting, the amendment proposed by the United Kingdom (A/CONF.152/C.1/L.38) was withdrawn. The UNCITRAL text for article 3 was adopted and referred to the Drafting Committee.

A. UNCITRAL text

38. The text as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 4

"Issuance of document

"(1) The operator may, and at the customer's request shall, within a reasonable period of time, at the option of the operator, either:

(a) Acknowledge his receipt of the goods by signing and dating a document presented by the customer that identifies the goods, or

(b) Issue a signed document identifying the goods, acknowledging his receipt of the goods and the date thereof, and stating their condition and quantity in so far as they can be ascertained by reasonable means of checking.

"(2) If the operator does not act in accordance with either subparagraph (a) or (b) of paragraph (1), he is rebuttably presumed to have received the goods in apparent good condition. No such presumption applies when the services performed by the operator are limited to the immediate transfer of the goods between means of transport.

"(3) The document referred to in subparagraph (b) of paragraph (1) may be issued in any form which preserves a record of the information contained therein.

"(4) The signature on the document referred to in paragraph (1) may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the document is signed."

B. Amendments

39. Amendments to article 4 were submitted by the United Kingdom (A/CONF.152/C.1/L.43), Japan (A/CONF.152/C.1/L.26), Mexico (A/CONF.152/C.1/L.35) and the United States of America (A/CONF.152/C.1/L.10).

40. Those amendments were to the following effect:

Article 4 as a whole

United Kingdom (A/CONF.152/C.1/L.43):
Revise article 4 as follows:

"(1) A carrier or other person having an interest in goods which he has placed in charge of an operator may request the operator to:

(a) confirm his identification of the goods;

(b) provide his acknowledgement of their receipt, and

(c) provide his acknowledgement that the goods are involved in international carriage.

"(2) On receipt of a request made under paragraph (1) the operator shall, within a reasonable period of time, either:

(a) acknowledge his receipt of the goods and that they are involved in international carriage by signing and dating a document presented by the customer that identifies the goods and indicates they are involved in international carriage;

(b) issue a signed document identifying the goods, acknowledging his receipt of the goods and the date thereof and that they are involved in international carriage, and stating their condition and quantity insofar as they can be ascertained by reasonable means of checking.

"(3) The operator may issue a signed and dated document as referred to in paragraph (2)(b) without receipt of a specific request made under paragraph (1).

"(4) A signed and dated document under paragraphs (2) and (3) shall be taken as absolute confirmtion that the provisions of this Convention apply to the goods identified in the document.

"(5) An operator who on receipt of a request made under paragraph (1) fails to act in accordance with either subparagraph (a) or (b) of paragraph (2) is presumed to have received the goods in good condition unless he can prove otherwise. No such presumption applies when the services performed by the operator are limited to the immediate transfer of the goods between means of transport.

"(6) [Text of article 4(3), A/CONF.152/5, as approved by the Committee]

"(7) [Text of article 4(4), A/CONF.152/5, as approved by the Committee]"

[Rejected: see Consideration, 42, below.]

New paragraph (1 bis)

Japan (A/CONF.152/C.1/L.26):
Insert in article 4 a new paragraph (1 bis) as follows:

"Any request by the customer under the preceding paragraph shall be made within a reasonable period of time after the receipt of the goods."

[Withdrawn: see Consideration, 43, below.]

Paragraph (3)

Mexico (A/CONF.152/C.1/L.35):
Add the following sentence after the UNCITRAL text for paragraph (3):

"The document may be replaced by an equivalent electronic data interchange message."

[Withdrawn: see Consideration, 45, below.]

Paragraph (4)

United States of America (A/CONF.152/C.1/L.10):
Replace the UNCITRAL text for paragraph (4) with the following:

"(4) The signature referred to in paragraph (1) means a handwritten signature, its facsimile or an equivalent authentication effected by any other means."

[Adopted: see Consideration, 46, below.]

C. Proceedings in the First Committee

(i) Meetings

41. The First Committee considered article 4 at its 5th, 6th, 7th and 11th meetings on 5, 8 and 10 April 1991.

(ii) Consideration

Article 4 as a whole

42. At the 11th meeting, the amendment proposed by the United Kingdom (A/CONF.152/C.1/L.43) was rejected by 5 votes in favour, 24 against and 4 abstentions.

New paragraph (1 bis)

43. At the 5th meeting, the amendment proposed by Japan (A/CONF.152/C.1/L.26) was withdrawn.

Paragraph (2)

44. At the 6th meeting, paragraph (2) was adopted by 17 votes in favour, 7 against and 9 abstentions.

Paragraph (3)

45. At the 5th meeting, the amendment proposed by Mexico (A/CONF.152/C.1/L.35) was withdrawn. Italy submitted an oral proposal that the UNCITRAL text for paragraph (3) be amended so as to refer to paragraph (1), instead of referring only to subparagraph (b) of paragraph (1). The proposal was adopted. Italy also submitted an oral proposal to add the following sentence after the UNCITRAL text for paragraph (3): "When the customer and the operator have agreed to communicate electronically, the documents referred to in paragraph (1) may be replaced by an equivalent electronic data interchange message." The amendment was adopted by 14 votes in favour, 12 against and 6 abstentions. The Drafting Committee was requested to ensure that the rule expressed in the second sentence of paragraph (3) as amended was distinct from, and did not alter, the rule expressed in the first sentence.

Paragraph (4)

46. At the 7th meeting, Mexico submitted an oral proposal that the wording of paragraph (4) be replaced by the wording of article 5(k) of the United Nations Convention on International Bills of Exchange and International Promissory Notes. The amendment proposed by the United States of America A/CONF.152/C.1/L.10) was adopted, subject to its alignment by the Drafting Committee with the wording of article 5(k) of the United Nations Convention on International Bills of Exchange and International Promissory Notes. The UNCITRAL text for article 4 was adopted with paragraphs (2), (3) and (4) amended as indicated above, and referred to the Drafting Committee.

Article 5

A. UNCITRAL text

47. The text of article 5 as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 5

"Basis of liability

"(1) The operator is liable for loss resulting from loss of or damage to the goods, as well as for delay in handing over the goods, if the occurrence which caused the loss, damage or delay took place during the period of the operator's responsibility for the goods as defined in article 3, unless he proves that he, his servants, agents or other persons of whose services the operator makes use for the performance of the transport-related services took all measures that could reasonably be required to avoid the occurrence and its consequences.

"(2) Where a failure on the part of the operator, his servants, agents or other persons of whose services the operator makes use for the performance of the transport-related services to take the measures referred to in paragraph (1) combines with another cause to produce loss, damage or delay, the operator is liable only to the extent that the loss resulting from such loss, damage or delay is attributable to that failure, provided that the operator proves the amount of the loss not attributable thereto.

"(3) Delay in handing over the goods occurs when the operator fails to hand them over to or place them at the disposal of a person entitled to take delivery of them within the time expressly agreed upon or, in the absence of such agreement, within a reasonable time after receiving a request for the goods by such person.

"(4) If the operator fails to hand over the goods to or place them at the disposal of a person entitled to take delivery of them within a period of 30 consecutive days after the date expressly agreed upon or, in the absence of such agreement, within a period of 30 consecutive days after receiving a request for the goods by such person, a person entitled to make a claim for the loss of the goods may treat them as lost."

B. Amendments

48. Amendments to article 5 were submitted by Germany (A/CONF.152/C.1/L.11), Spain (A/CONF.152/C.1/L.20), Egypt (A/CONF.152/C.1/L.42), Netherlands (A/CONF.152/C.1/L.24), Belgium (A/CONF.152/C.1/L.39) and Morocco (A/CONF.152/C.1/L.49).

49. Those amendments were to the following effect:

New paragraph (1 bis)

Germany (A/CONF.152/C.1/L.11):
After paragraph (1), add a new paragraph (1 bis) as follows:

"If, at the time of the occurrence, the customer or other persons acting on behalf of the customer were granted access to the area referred to in article 1, subparagraph (a), to inspect, treat or handle the goods, it is up to the claimant to prove that the operator, his servants, agents or other persons of whose services the operator makes use for the performance of the transport-related services failed to take all measures that could reasonably be required to avoid the occurrence and its consequences."

[Rejected as amended: see Consideration, 51, below.]

Paragraph (2)

(i) Spain (A/CONF.152/C.1/L.20):
Relocate paragraph (2) to the end of article 5.

[Referred to the Drafting Committee: see Consideration, 52, below.]

(ii) Egypt (A/CONF.152/C.1/L.42):
Delete the words "provided that the operator proves the amount of the loss not attributable thereto".

[Rejected: see Consideration, 52, below.]

New paragraph (5)

(i) Netherlands (A/CONF.152/C.1/L.24):
Add a new paragraph (5) as follows:

"The total amount recoverable shall be calculated by reference to the value of the goods at the place and time at which the goods are delivered, or should have been delivered, to the person entitled to take delivery of them. The value of the goods shall be fixed according to the commodity exchange price, or, if there is no such price, according to the current market price, or, if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality."

[Withdrawn: see Consideration, 54, below.]

(ii) Belgium (A/CONF.152/C.1/L.39):
Add a new paragraph (5) as follows:

"Nevertheless, the operator shall assume no liability in respect of goods the delivery of which has not been requested by the person entitled to take delivery of them within a reasonable period of time after the operator has notified him that they have been placed at his disposal."

[Rejected: see Consideration, 54, below.]

(iii) Morocco (A/CONF.152/C.1/L.49):
Add the following additional paragraph to article 5:

"The operator is exempt from liability for loss or damage due to a cause for which he cannot be held responsible, such as fortuitous events or force majeure, inherent or latent defects in the goods, negligence on the part of the depositor (carriers or shippers) or incorrect indications regarding the weight and markings of the packages or the nature of the goods."

[Not considered: see Consideration, 54, below.]

C. Proceedings in the First Committee

(i) Meetings

50. The First Committee considered article 5 at its 7th and 8th meetings on 8 April 1991.

(ii) Consideration

New paragraph (1 bis)

51. At the 7th meeting, the amendment proposed by Germany (A/CONF.152/C.1/L.11) was amended by adding the word "unsupervised", so that the opening words of the proposed new paragraph read: "If, at the time of the occurrence, the customer or other persons acting on behalf of the customer were granted unsupervised access to the area referred to in article 1, subparagraph (a)...." The new paragraph as amended was jointly proposed by Germany and Australia. The proposed new paragraph was rejected by 4 votes in favour, 27 against and 4 abstentions.

Paragraph (2)

52. At the 7th meeting, the amendment proposed by Spain (A/CONF.152/C.1/L.20) was regarded as a drafting matter and referred to the Drafting Committee. The amendment proposed by Egypt (A/CONF.152/C.1/L.42) was rejected by 7 votes in favour, 20 against and 7 abstentions.

53. At the 8th meeting, Morocco submitted an oral proposal that the wording of paragraph (2) should be aligned with the wording of article 5(7) of the United Nations Convention on the Carriage of Goods by Sea, 1978, in particular by replacing the word "failure" with the words "fault or neglect". There being insufficient support for the proposed amendment, it was rejected.

New paragraph (5)

54. At the 7th meeting, the amendment proposed by Netherlands (A/CONF.152/C.1/L.24) was withdrawn. At the 8th meeting, the amendment proposed by Belgium (A/CONF.152/C.1/L.39) was rejected by 13 votes in favour, 17 against and 4 abstentions. The amendment proposed by Morocco (A/CONF.152/C.1/L.49) was not introduced to the Committee and therefore was not considered. The UNCITRAL text for article 5 was adopted and referred to the Drafting Committee.

Article 6

A. UNCITRAL text

55. The text of article 6 as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 6

"Limits of liability

"(1) (a) The liability of the operator for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount not exceeding [8.33] units of account per kilogram of gross weight of the goods lost or damaged.

(b) However, if the goods are handed over to the operator immediately after carriage by sea or by inland waterways, or if the goods are handed over, or are to be handed over, by him for such carriage, the liability of the operator for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount not exceeding [2.75] units of account per kilogram of gross weight of the goods lost or damaged. For the purposes of this paragraph, carriage by sea or by inland waterways includes pick-up and delivery within a port.

"(2) The liability of the operator for delay in handing over the goods according to the provisions of article 5 is limited to an amount equivalent to two and a half times the charges payable to the operator for his services in respect of the goods delayed, but not exceeding the total of such charges in respect of the consignment of which the goods were a part.

"(3) In no case shall the aggregate liability of the operator under both paragraphs (1) and (2) exceed the limitation which would be established under paragraph (1) for total loss of the goods in respect of which such liability was incurred.

"(4) The operator may agree to limits of liability exceeding those provided for in paragraphs (1), (2) and (3)."

B. Amendments

56. Amendments to article 6 were submitted by Germany (A/CONF.152/C.1/L.12), Japan (A/CONF.152/C.1/L.27), Morocco (A/CONF.151/C.1/L.51) and Yugoslavia (A/CONF.152/C.1/L.45).

57. Those amendments were to the following effect:

Paragraph (1)

(i) Germany (A/CONF.152/C.1/L.12, paragraph 1):
Delete subparagraph (b) of paragraph (1).

[Rejected: see Consideration, 59, below.]

(ii) Morocco (A/CONF.152/C.1/L.51):
In subparagraph (b), replace the figure "2.75" by "2.5".

[Rejected: see Consideration, 60, below.]

(iii) Germany (A/CONF.152/C.1/L.12, paragraph 2):
Re-word paragraph (1) as follows:

"The liability of the operator for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount not exceeding [....] units of account per package or other shipping unit, or [....] units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher."

[Rejected: see Consideration, 61, below.]

(iv) Japan (A/CONF.152/C.1/L.27):
Add a new subparagraph (c) as follows:

"Nevertheless, when the loss of or damage to a part of the goods affects the value of another part of the goods, the total weight of the lost or damaged goods and of the goods whose value is affected shall be taken into consideration in determining the limit of liability."

[Adopted: see Consideration, 62, below.]

New paragraph (1 bis)

Germany (A/CONF.152/C.1/L.12, paragraph 3):
Add the followng new paragraph (1 bis):

"(1 bis) For the purpose of calculating which amount is the higher in accordance with paragraph (1) of this article, the following rules apply:

(a) Where a container, pallet or similar article of transport or packaging is used to consolidate goods, the packages or other shipping units enumerated in the document under article 4, paragraph (1), as packed in such article of transport or packaging are rebuttably presumed to be packages or shipping units. Except as aforesaid, the goods in such article of transport or packaging are deemed one shipping unit.

(b) In cases where the container, pallet or similar article of transport or packaging itself has been lost or damaged, that article of transport or packaging, if not owned or otherwise supplied by the operator, is considered one separate shipping unit."

[Rejected: see Consideration, 63, below.]

Paragraph (4)

Yugoslavia (A/CONF.152/C.1/L.45):
Add a second sentence to paragraph (4) as follows:

"The higher limits of liability agreed to by the operator apply also to the operator's servants, agents or other persons of whose services the operator makes use for the performance of the transport-related services."

[Rejected: see Consideration, 64, below.]

C. Proceedings in the First Committee

(i) Meetings

58. The First Committee considered article 6 at its 8th, 9th and 10th meetings on 8 and 9 April 1991, respectively.

(ii) Consideration

Paragraph (1)

59. At the 8th meeting, the amendment proposed by Germany (A/CONF.152/C.1/L.12, paragraph 1) was rejected by 4 votes in favour, 27 against and 4 abstentions.

60. At the 9th meeting, the amendment proposed by Morocco (A/CONF.152/C.1/L.51) was rejected by 8 votes in favour, 13 against and 4 abstentions. An oral proposal was submitted to the effect that the amounts of the limits of liability should be higher than those set forth within square brackets in paragraph (1) as prepared by UNCITRAL. The proposal was rejected by 8 votes in favour, 19 against and 4 abstentions. Accordingly, the amounts in paragraph (1) as prepared by UNCITRAL were adopted and the square brackets surrounding them were removed.

61. At the 10th meeting, Germany declared that, in view of the rejection of its proposal that subparagraph (b) should be deleted (A/CONF.152/C.1/L.12, paragraph 1) (see paragraph 59, above), its proposal to add to the text of paragraph (1), as a basis for calculating the limits of liability, a reference to a number of units of account per package or shipping unit (A/CONF.152/C.1/L.12, paragraph 2) applied to both subparagraph (a) and subparagraph (b) of paragraph (1). The proposal was rejected by 14 votes in favour, 19 against and 4 abstentions.

62. At the 8th meeting, the amendment proposed by Japan (A/CONF.152/C.1/L.27) was adopted by 12 votes in favour, 7 against and 15 abstentions.

New paragraph (1 bis)

63. The rejection of the proposal of Germany to add to the text of paragraph (1), as a basis for calculating the limits of liability, a reference to a number of units of account per package or shipping unit (A/CONF.152/C.1/L.12, paragraph 2; see paragraph 61, above), also implied the rejection of the proposal of Germany to add a new paragraph (1 bis) to article 6 (A/CONF.152/C.1/L.12, paragraph 3).

Paragraph (4)

64. An indicative vote taken at the 9th meeting on the amendment proposed by Yugoslavia (A/CONF.152/C.1/L.45) showed little support for the amendment; it was accordingly rejected. An oral proposal was submitted to the effect that the Convention should set forth an express rule stipulating whether or not higher limits of liability agreed to by the operator with its customer would also apply to the servants or agents of the operator. Sixteen States favoured setting forth a rule that higher limits of liability agreed to by the operator would also apply to its servants and agents; 15 States favoured setting forth a rule that higher limits of liability agreed to by the operator would not apply to its servants and agents; 4 States abstained. The vote was regarded as insufficiently definitive to set forth an express rule; accordingly, the text of paragraph (4) as prepared by UNCITRAL was retained unchanged. The UNCITRAL text for article 6 was adopted subject to the amendment by Japan (A/CONF.152/C.1/L.27; see paragraph 62, above), and referred to the Drafting Committee.

New Article (6 bis)

65. At the 10th meeting, a proposal was submitted by Germany (A/CONF.152/C.1/L.13) that, after article 6, a new article 6 bis should be added, as follows:

> "In no case shall the aggregate liability of the operator resulting from all claims arising out of a single occurrence exceed 10 million units of account. If the aggregate liability exceeds 10 million units of account, the amount payable by the operator shall be distributed among the claimants in proportion to their claims."

66. At the 10th meeting, Germany orally amended the first sentence of the proposed new article to read as follows:

> "The aggregate liability of the operator resulting from all claims arising out of a single occurrence shall not exceed [....] units of account."

67. That sentence was voted on separately, and was rejected by 9 votes in favour, 18 against and 8 abstentions. The rejection of that sentence implied the rejection of the proposal in its entirety.

Article 7

A. UNCITRAL text

68. The text of article 7 as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 7

"Application to non-contractual claims

"(1) The defences and limits of liability provided for in this Convention apply in any action against the operator in respect of loss of or damage to the goods, as well as delay in handing over the goods, whether the action is founded in contract, in tort or otherwise.

"(2) If such an action is brought against a servant or agent of the operator, or against another person of whose services the operator makes use for the performance of the transport-related services, such servant, agent or person, if he proves that he acted within the scope of his employment or engagement by the operator, is entitled to avail himself of the defences and limits of liability which the operator is entitled to invoke under this Convention.

"(3) Except as provided in article 8, the aggregate of the amounts recoverable from the operator and from any servant, agent or person referred to in the preceding paragraph shall not exceed the limits of liability provided for in this Convention."

B. Amendment

69. An amendment to article 7 was submitted by the United States of America (A/CONF.152/C.1/L.14).

70. That amendment was to the following effect:
Add to paragraph (3) the following sentence:

> "Such aggregate liability shall not be affected by the operator's agreement under article 6(4) to increase the limits of liability."
>
> [Withdrawn: see Consideration, 72, below.]

C. Proceedings in the First Commttee

(i) Meetings

71. The First Committee considered article 7 at its 11th meeting on 10 April 1991.

(ii) Consideration

72. At the 11th meeting, the amendment proposed by the United States of America (A/CONF.152/C.1/L.14) was withdrawn. The UNCITRAL text for article 7 was adopted and referred to the Drafting Committee.

Article 8

A. UNCITRAL text

73. The text of article 8 as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 8

"Loss of right to limit liability

"(1) The operator is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay resulted from an act or omission of the operator himself or his servants or agents done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

"(2) Notwithstanding the provision of paragraph (2) of article 7, a servant or agent of the operator or another person of whose services the operator makes use for the performance of the transport-related services is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay resulted from an act or omission of such servant, agent or person done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result."

B. Amendments

74. Amendments to article 8 were submitted by Netherlands (A/CONF.152/C.1/L.25) and Germany (A/CONF.152/C.1/L.3).

75. Those amendments were to the following effect:

(i) Netherlands (A/CONF.152/C.1/L.25):
Delete from paragraph (1) the words "himself or his servants or agents".

[Rejected: See Consideration, 77, below.]

(ii) Germany (A/CONF.152/C.1/L.3):

(a) Delete from paragraph (1) the words "or his servants or agents"

[Withdrawn: see Consideration, 77, below.]

(b) In the event that the foregoing amendment is not adopted, add at the end of paragraph (1) the following:

"...; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent [acted] [was acting] within the scope of his employment."

[Rejected: see Consideration, 77, below.]

C. Proceedings in the First Committee

(i) Meetings

76. The First Committee considered article 8 at its 11th meeting on 10th April 1991.

(ii) Consideration

77. At the 11th meeting, the amendment proposed by Netherlands (A/CONF.152/C.1/L.25) was rejected by 8 votes in favour, 21 against and 4 abstentions. In view of the rejection of that amendment, the amendment proposed by Germany to delete from paragraph (1) the words "or his servants or agents" (A/CONF.152/C.1/L.3) was withdrawn. The amendment proposed by Germany to add wording at the end of paragraph (1) (A/CONF.152/C.1/L.3) was rejected by 10 votes in favour, 22 against and 3 abstentions. The UNCITRAL text for article 8 was adopted and referred to the Drafting Committee.

Article 9

A. UNCITRAL text

78. The text of article 9 as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 9

"Special rules on dangerous goods

"If dangerous goods are handed over to an operator without being marked, labelled, packaged or documented in accordance with any law or regulation relating to dangerous goods applicable in the country where the goods are handed over and if, at the time the goods are handed over to him, the operator does not otherwise know of their dangerous character, he is entitled:

"(a) To take all precautions the circumstances may require, including, when the goods pose an imminent danger to any person or property, destroying the goods, rendering them innocuous, or disposing of them by any other lawful means, without payment of compensation for damage to or destruction of the goods resulting from such precautions, and

"(b) To receive reimbursement for all costs incurred by him in taking the measures referred to in subparagraph (a) from the person who failed to meet any obligation under such applicable law or regulation to inform him of the dangerous character of the goods."

B. Amendments

79. Amendments to article 9 were submitted by Belgium (A/CONF.152/C.1/L.40), Finland (A/CONF.152/C.1/L.55), Spain (A/CONF.152/C.1/L.21), United Nations Environment Programme (submission of the proposal endorsed by Sweden) (A/CONF.152/C.1/L.50).

80. Those amendments were to the following effect:

(i) Belgium (A/CONF.152/C.1/L.40):
Delete the following words from paragraph (1):

"and if, at the time the goods are handed over to him, the operator does not otherwise know of their dangerous character".

[Rejected: see Consideration, 82, below.]

(ii) Finland (A/CONF.152/C.1/L.55):
Insert before the first sentence of paragraph (1) the following:

"Where dangerous goods are handed over to the operator, he must be informed of the dangerous character of the goods and, if necessary, of the precautions to be taken."

[Rejected: see Consideration, 82, below.]

(iii) Spain (A/CONF.152/C.1/L.21):

Change the words "handed over to an operator" in the chapeau of article 9 to "taken in charge by an operator".

[Referred to Drafting Committee: see Consideration, 83, below.]

(iv) United Nations Environment Programme (A/CONF.152/C.1/L.50):
Revise article 9 as follows:

"If dangerous goods are handed over to an operator without being marked, labelled, packaged or documented in conformity with international or domestic rules and regulations applicable in the country where the goods are handed over, the operator is entitled:

"(a) To take all precautions the circumstances may require in accordance with those international or national rules and regulations, without payment of compensation for damage resulting from such precautions, and

"(b) To receive reimbursement for all costs incurred by him in taking the precautions referred to in subparagraph (a) from the person who failed to meet any obligation under such applicable rules and regulations."

[Rejected: see Consideration, 84, below.]

C. Proceedings in the First Committee

(i) Meetings

81. The First Committee considered article 9 at its 11th and 12th meetings on 10 April 1991.

(ii) Consideration

82. At the 11th meeting, the amendment proposed by Belgium (A/CONF.152/C.1/L.40) was rejected by 3 votes in favour, 29 against and 1 abstention. The amendment proposed by Finland (A/CONF.152/C.1/L.55) was rejected by 15 votes in favour, 15 against and 4 abstentions.

83. At the 12th meeting, the amendment proposed by Spain (A/CONF.152/C.1/L.21) was regarded as a drafting matter and referred to the Drafting Committee.

84. At the 12th meeting, Sweden endorsed the submission to the Committee of the revision of article 9 proposed by the United Nations Environment Programme (A/CONF.152/C.1/L.50). The chapeau of the proposed revised article was rejected by 6 votes in favour, 21 against and 4 abstentions. Subparagraph (a) of the proposed revised article was rejected by 9 votes in favour, 19 against and 2 abstentions. Subparagraph (b) of the proposed revised article was rejected by 4 votes in favour, 21 against and 6 abstentions. Accordingly, the proposal as a whole was rejected. The UNCITRAL text for article 9 was adopted and referred to the Drafting Committee.

Article 10

A. UNCITRAL text

85. The text of article 10 as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 10

"Rights of security in goods

"(1) The operator has a right of retention over the goods for costs and claims which are due in connection with the transport-related services performed by him in respect of the goods during the period of his responsibility for them. However, nothing in this Convention shall affect the validity under the applicable law of any contractual arrangements extending the operator's security in the goods.

"(2) The operator is not entitled to retain the goods if a sufficient guarantee for the sum claimed is provided or if an equivalent sum is deposited with a mutually accepted third party or with an official institution in the State where the operator has his place of business.

"(3) In order to obtain the amount necessary to satisfy his claim, the operator is entitled, to the extent permitted by the law of the State where the goods are located, to sell all or part of the goods over which he has exercised the right of retention provided for in this article. The preceding sentence does not apply to containers, pallets or similar articles of transport or packaging which are owned by a party other than the carrier or the shipper and which are clearly marked as regards ownership except in respect of claims by the operator for the cost of repairs of or improvements to the containers, pallets or similar articles of transport or packaging.

"(4) Before exercising any right to sell the goods, the operator shall make reasonable efforts to give notice of the intended sale to the owner of the goods, the person from whom the operator received them and the person entitled to take delivery of them from the operator. The operator shall account appropriately for the balance of the proceeds of the sale in excess of the sums due to the operator plus the reasonable costs of the sale. The right of sale shall in all other respects be exercised in accordance with the law of the State where the goods are located."

B. Amendments

86. Amendments to article 10 were submitted by Germany (A/CONF.152/L.16), Morocco (A/CONF.152/C.1/L.54) and the United States of America (A/CONF.152/C.1/L.15).

87. Those amendments were to the following effect:

Paragraph (1)

Germany (A/CONF.152/L.16):
Add to the first sentence of paragraph (1) the words "or after", so that the sentence would read as follows:

"The operator has a right of retention over the goods for costs and claims which are due in connection with the transport-related services performed by him in respect of the goods during or after the period of his responsibilty for them."

[Adopted: see Consideration, 89, below.]

Paragraph (3)

(i) Germany (A/CONF.152/C.1/L.16):
Delete paragraph (3).

[Rejected: see Consideration, 90, below.]

(ii) Morocco (A/CONF.152/C.1/L.54):
Insert at the beginning of the second sentence the following:

"With the exception of empty containers, which are deemed to be goods for the purposes of this Convention ..."

[Withdrawn: see Consideration, 90, below.]

(iii) United States of America (A/CONF.152/C.1/L.15):

[see under "New paragraph (6)", below.]

Paragraph (4)

Morocco (A/CONF.152/C.1/L.54):
Amend the first sentence to read as follow:

"Before exercising any right to sell the goods, the operator shall make reasonable efforts to give notice of the intended sale to the owner of the goods or the person from whom the operator received them or the person entitled to take delivery of them from the operator."

[Rejected: see Consideration, 91, below.]

New paragraph (5)

United States of America (A/CONF.152/C.1/L.15):
Add a new paragraph (5) as follows:

"(5) The terminal operator may consider goods in its charge abondoned if the goods are not claimed within (...) days after the day until which the operator has agreed to keep the goods, or, if such agreement has not been concluded, after the day as of which notice has been given by the operator to the person entitled to take delivery of the goods that the goods have been placed at the disposal of that person."

[Rejected: see Consideration, 92, below.]

New paragraph (6)

United States of America (A/CONF.152/C.1/L.15):
Delete the second sentence of paragraph (3) and incorporate into a new paragraph (6), as follows:

"(6) Paragraph (3) and (5) do not apply to containers, pallets or similar articles of transport or packaging which are owned by a party other than the carrier or the shipper and which are clearly marked as regards ownership except in respect of claims by the operator for the cost of repairs of or improvements to the containers, pallets or similar articles of transport or packaging."

[Withdrawn: see Consideration, 92, below.]

C. Proceedings in the First Committee

(i) Meetings

88. The Committee considered article 10 at its 12th and 13th meeting on 10 and 11 April 1991.

(ii) Consideration

Paragraph (1)

89. At the 12th meeting, the amendment proposed by Germany (A/CONF.152/C.1/L.16) was adopted by 21 votes in favour, 7 against and 8 abstentions.

Paragraph (3)

90. At the 12th meeting, the proposal by Germany to delete paragraph (3) was rejected by 9 votes in favour, 21 against and 3 abstentions. At the 13th meeting, the proposal by Morocco (A/CONF.152/C.1/L.54) was withdrawn. With respect to the proposal by the United States of America (A/CONF.152/C.1/L.15), see paragraph 92, below.

Paragraph (4)

91. At the 13th meeting, the amendment proposed by Morocco (A/CONF.152/C.1/L.54) was rejected by 2 votes in favour, 21 against and 6 abstentions.

New paragraphs (5) and (6)

92. At the 13th Meeting, the proposal by the United States of America to add a new paragraph (5) (A/CONF.152/C.1/L.15) was rejected by 11 votes in favour, 12 against and 9 abstentions. In view of the rejection of that proposal, the proposal by the United States of America to delete the second sentence of paragraph (3) and incorporate it into a new paragraph (6) (A/CONF.152/C.1/L.15) was withdrawn. The UNCITRAL text for article 10, with the amendment to paragraph (1), was referred to the Drafting Committee.

Article 11

A. UNCITRAL text

93. The text of article 11 as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 11

"Notice of loss, damage or delay

"(1) Unless notice of loss or damage, specifying the general nature of the loss or damage, is given to the operator not later than the third working day after the day when the goods were handed over by the operator to the person entitled to take delivery of them, the handing over is prima facie evidence of the handing over by the operator of the goods as described in the document issued by the operator pursuant to paragraph (1)(b) of article 4 or, if no such document was issued, in good condition.

"(2) Where the loss or damage is not apparent, the provisions of paragraph (1) apply correspondingly if notice is not given to the operator within 15 consecutive days after the day when the goods reached the final recipient, but in no case later than 60 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.

"(3) If the operator participated in a survey or inspection of the goods at the time when they were handed over to the person entitled to take delivery of them, notice need not be given to the operator of loss or damage ascertained during that survey or inspection.

"(4) In the case of any actual or apprehended loss of or damage to the goods, the operator and the person entitled to take delivery of the goods shall give all reasonable facilities to each other for inspecting and tallying the goods.

"(5) No compensation shall be payable for loss resulting from delay in handing over the goods unless notice has been given to the operator within 21 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them."

B. Amendments

94. Amendments to article 11 were submitted by Morocco (A/CONF.152C.1/L.52), Turkey (A/CONF.152/C.1/L.46) and Japan (A/CONF.152/C.1/L.41).

95. Those amendments were to the following effect:

(i) Morocco (A/CONF.152/C.1/L.52):

(a) Delete paragraph (1), (2), (3) and (5)

[Rejected: see Consideration, 97, below.]

(b) If paragraphs (1), (2), (3) and (5) are not deleted, re-word them as follows:

"(1) Unless notice of loss or damage, specifying the general nature of the loss or damage, is given to the operator not later than the third working day after the day when the goods were handed over to or placed at the disposal of the person entitled to take delivery of them by the operator, the goods are presumed to have been handed over to or placed at the disposal of such person by the operator as they are described in the document issued by the operator pursuant to paragraph (1) (b) of article 4 or, if no such document was issued, in good condition.

"(2) Where the loss or damage is not apparent, the provisions of paragraph (1) apply correspondingly if notice is not given to the operator within 15 consecutive days after the day when the goods reached the final recipient, but in no case later than 60 consecutive days after the day when the goods were handed over to or placed at the disposal of the person entitled to take delivery of them.

"(3) If the operator participated in a survey or inspection of the goods at the time when they were handed over to or placed at the disposal of the person entitled to take delivery of them, notice need not be given to the operator of loss or damage ascertained during that survey or inspection.

...

"(5) No compensation shall be payable for loss resulting from delay in handing over the goods to or placing them at the disposal of the person entitled to take delivery of them unless notice has been given to the operator within 21 consecutive days after the day when the goods were handed over to or placed at the disposal of such person."

[Rejected: see Consideration, 97, below.]

(c) Amend paragraph (4) by:

(i) inserting the words "the carrier", and

(ii) adding at the end of the paragraph the words "at the place of storage or at any other place decided on by common agreement" so that paragraph (4) would read as follows:

"In the case of any actual or apprehended loss of or damage to the goods, the operator, the carrier and the person entitled to take delivery of the goods shall give all reasonable facilities to each other for inspecting and tallying the goods at the place of storage or at any other place decided on by common agreement."

[Adopted in part and rejected in part: see Consideration, 97, below.]

(ii) Turkey (A/CONF.152/C.1/L.46):
In paragraph (2), replace "15" with "7" and replace "60" with "30".

[Rejected: see Consideration, 98, below.]

(iii) Japan (A/CONF.152/C.1/L.41):
In paragraph (2), insert, after the words "final recipient", the words "who is in a position to inspect them".

[Withdrawn: see Consideration, 98, below.]

C. Proceedings in the First Committee

(i) Meetings

96. The First Committee considered article 11 at its 13th and 14th meetings on 11 April 1991.

(ii) Consideration

97. With respect to the amendments proposed by Morocco (A/CONF.152/C.1/L.52), at the 13th meeting: (a) the proposal that paragraphs (1), (2), (3) and (5) should be deleted was rejected; (b) the proposal that paragraphs (1), (2), (3) and (5) should be re-worded was rejected by 4 votes in favour, 18 against and 11 abstentions; (c) with respect to the proposed amendments to paragraph (4), the proposal to insert the words "the carrier" was adopted by 17 votes in favour, 11 against and 6 abstentions, and the proposal to add the words at the end of the paragraph was rejected by 5 votes in favour, 19 against and 9 abstentions.

98. At the 14th meeting, the amendment proposed by Turkey (A/CONF.152/C.1/L.46) was rejected by 4 votes in favour, 22 against and 9 abstentions. The amendment proposed by Japan (A/CONF.152/C.1/L.41) was withdrawn. The UNCITRAL text for article 11, with the amendment to paragraph (4), was referred to the Drafting Committee.

Article 12

A. UNCITRAL text

99. The text of article 12 as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 12

"Limitation of actions

"(1) Any action under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.

"(2) The limitation period commences:

(a) On the day the operator hands over the goods or part thereof to, or places them at the disposal of, a person entitled to take delivery of them, or

(b) In cases of total loss of the goods, on the day the operator notifies the person entitled to make a claim that the goods are lost, or on the day that person may treat the goods as lost in accordance with paragraph (4) of article 5, whichever is earlier.

"(3) The day on which the limitation period commences is not included in the period.

"(4) The operator may at any time during the running of the limitation period extend the period by a declaration in writing to the claimant. The period may be further extended by another declaration or declarations.

"(5) A recourse action by a carrier or another person against the operator may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if it is instituted within 90 days after the carrier or other person has been held liable in an action against himself or has settled the claim upon which such action was based and if, within a reasonable period of time after the filing of a claim against a carrier or other person that may result in a recourse action against the operator, notice of the filing of such a claim has been given to the operator."

B. Amendments

100. Amendments to article 12 were submitted by Morocco (A/CONF.152/C.1/L.53), Turkey (A/CONF.152/C.1/L.47), Germany (A/CONF.152/C.1/L.17), the United States of America (A/CONF.152/C.1/L.18) and Egypt (A/CONF.152/C.1/L.58).

101. Those amendments were to the following effect:

Paragraph (1)

Morocco (A/CONF.152/C.1/L.53) and Turkey (A/CONF.152/C.1/L.47):
Replace the period of "two years" by a period of "one year".

[Rejected: see Consideration, 103, below.]

Paragraph (2)

(i) United States of America (A/CONF.152/C.1/L.18):
Re-word subparagraph (a) as follows:

"on the day the operator hands over the goods or part thereof to, or places them at the disposal of, a person entitled to take delivery of them, or considers the goods as abandoned in accordance with paragraph (5) of article 10, or"

[Withdrawn: see Consideration, 104, below.]

(ii) Germany (A/CONF.152/C.1/L.17):
Re-word subparagraph (b) as follows:

"In cases of total loss of the goods, on the day the person entitled to make a claim receives notice from the operator that the goods are lost, or on the day that person may treat the goods as lost in accordance with paragraph (4) of article 5, whichever is earlier."

[Withdrawn, subsequently re-introduced and adopted in substance: see Consideration, 104, below.]

(iii) Egypt (A/CONF.152/C.1/L.58):
Reword paragraph (2) as follows:

"(2) The limitation period commences:

(a) on the day following the day on which the operator hands over the goods or part thereof to, or placed them at the disposal of a person entitled to take delivery of them, or

(b) in cases of total loss of the goods, on the day following the day on which the operator notifies the person entitled to make a claim that the goods are lost, or on the day that person may treat the goods as lost in accordance with paragraph (4) of article 5, whichever is earlier."

[Not considered: see Consideration, 104, below.]

Paragraph (3)

Egypt (A/CONF.152/C.1/L.58):
Delete paragraph (3)

[Not considered: see Consideration, 105, below.]

Paragraph (5)

Morocco (A/CONF.152/C.1/L.53):
Amend paragraph (5) to read as follows:

"A recourse action by a carrier or another person against the operator may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if it is instituted within 30 days after the carrier or other person has been sued in an action against himself or has settled the claim upon which such suit was based."

[Withdrawn: see Consideration, 107, below.]

C. Proceedings in the First Committee

(i) Meetings

102. The First Committee considered article 12 at its 14th meeting on 11 April 1991.

(ii) Consideration

Paragraph (1)

103. At the 14th meeting, the amendments proposed by Morocco (A/CONF.152/C.1/L.53) and Turkey (A/CONF.152/C.1/L.47) were considered concurrently and were rejected by 10 votes in favour, 19 against and 5 abstentions.

Paragraph (2)

104. At the 14th meeting, the amendment proposed by the United States of America (A/CONF.152/C.1/L.18) was withdrawn in view of the rejection of its proposal to add a new paragraph (5) to article 10 (A/CONF.152/C.1/L.15). The proposal by Germany (A/CONF.152/C.1/L.17) was withdrawn; however, it was subsequently re-introduced and its substance, namely, that, in cases of total loss of the goods, the limitation period commences on the day the person entitled to make a claim receives the notice from the operator, was adopted by 13 votes in favour, 11 against and 11 abstentions. The proposal by Egypt (A/CONF.152/C.1/L.58) was not considered as it was submitted after article 12 had been adopted.

Paragraph (3)

105. The proposal by Egypt (A/CONF.152/C.1/L.58) was not considered as it was submitted after article 12 had been adopted.

Paragraph (4)

106. At the 14th meeting, the United States of America submitted an oral proposal that the reference in the first sentence of paragraph (4) to "a declaration in writing" be changed to "giving notice", so that the sentence would read along the following lines: "The operator may at any time during the running of the limitation period extend the period by giving notice to the claimant." The proposed amendment was adopted and referred to the Drafting Committee.

Paragraph (5)

107. At the 14th meeting, the proposal by Morocco (A/CONF.152/C.1/L.53) was withdrawn. An oral proposal was submitted to the effect that paragraph (5) should be redrafted so as to conform with article 20(5) of the United Nations Convention on the Carriage of Goods by Sea, 1978. That proposal was rejected by 5 votes in favour, 14 against and 4 abstentions.

108. Mexico submitted an oral proposal to the effect that an overall time limit of 10 years for bringing a recourse action against the operator should be added to the text of paragraph (5) as prepared by UNCITRAL. That proposal was rejected by 6 votes in favour, 12 against and 12 abstentions. The UNCITRAL text for article 12, with the amendments to paragraphs (2) and (4), was adopted and referred to the Drafting Committee.

Article 15

A. UNCITRAL text

109. The text of article 15 as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 15

"International transport conventions

"This Convention does not modify any rights or duties which may arise under an international convention relating to the international carriage of goods which is binding on a State which is a party to this Convention or under any law of such State giving effect to or derived from a convention relating to the international carriage of goods."

B. Amendments

110. Alternative amendments to article 15 were submitted by Australia (A/CONF.152/C.1/L.57).

111. Those amendments were to the following effect:

It was proposed that, if relevant issues could be satisfactorily resolved under article 1 and/or article 2, article 15 should be deleted.

Alternatively, it was proposed that article 15 should be redrafted as follows:

> "This Convention does not modify any rights or duties which may arise under an international convention relating to the carriage of goods or a national law giving effect to or derived from and corresponding with such a convention."

[Withdrawn: see Consideration, 113 and 114, below.]

C. Proceedings in the First Committee

(i) Meetings

112. The First Committee considered article 15 at its 14th and 15th meetings on 11 and 12 April 1991.

(ii) Consideration

113. At the 14th meeting, it was decided that the alternative amendments proposed by Australia (A/CONF.152/C.1/L.57) would be considered in the light of the eventual decision by the Committee on the proposals by the ad hoc Working Group (A/CONF.152/C.1/L.44/Rev.1) and by Australia (A/CONF.152/C.1/L.56/Rev.1) that a definition of "carrier" should be added to article 1.

114. At the 15th meeting, an oral proposal was submitted that article 15 should be amended by deleting the words "or derived from". The proposed amendment was adopted by 20 votes in favour, 4 against and 9 abstentions. The alternative amendments proposed by Australia were withdrawn. The UNCITRAL text for article 15, as amended by the oral proposal, was adopted and referred to the Drafting Committee.

Article 16

A. UNCITRAL text

115. The text as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 16

"Unit of account

"(1) The unit of account referred to in article 6 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article 6 are to be expressed in the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The equivalence between the national currency of a State Party which is a member of the International Monetary Fund and the Special Drawing Right is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The equivalence between the national currency of a State Party which is not a member of the International Monetary Fund and the Special Drawing Right is to be calculated in a manner determined by that State.

"(2) The calculation mentioned in the last sentence of the preceding paragraph is to be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for amounts in article 6 as is expressed there in units of account. States Parties must communicate to the depositary the manner of calculation at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession and whenever there is a change in the manner of such calculation."

B. Amendments

116. No amendments to article 16 were submitted.

C. Proceedings in the First Committee

(i) Meetings

117. The First Committee considered article 16 at its 14th meeting on 11 April 1991.

(ii) Consideration

118. At the 14th meeting, the UNCITRAL text for article 16 was adopted and referred to the Drafting Committee.

Article 2

A. UNCITRAL text

119. The text of article 2 prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 2

"Scope of application

"(1) This Convention applies to transport-related services performed in relation to goods which are involved in international carriage:

(a) When the transport-related services are performed by an operator whose place of business is located in a State Party, or

(b) When the transport-related services are performed in a State Party, or

(c) When, according to the rules of private international law, the transport-related services are governed by the law of a State Party.

"(2) If the operator has more than one place of business, the place of business is that which has the closest relationship to the transport-related services as a whole.

"(3) If the operator does not have a place of business, reference is to be made to the operator's habitual residence."

B. Amendments

120. Amendments to article 2 were submitted by Germany (A/CONF.152/C.1/L.8) and Egypt (A/CONF.152/C.1/L.32). A proposal was submitted by the United States of America (A/CONF.152/C.1/L.7).

121. Those amendments and the proposal were to the following effect:

(i) Germany (A/CONF.152/C.1/L.8):
Re-word the chapeau of paragraph (1) to read as follows:

"This Convention applies to transport-related services performed or procured in relation to goods which are involved in international carriage: ..."

[Referred to Drafting Committee: see Consideration, 123, below.)

(ii) Egypt (A/CONF.152/C.1/L.32):
After the words "State Party" in subparagraphs (a), (b) and (c), add "to the Convention".

[Referred to the Drafting Committee: see Consideration, 123, below.]

(iii) United States of America (A/CONF.152/C.1/L.7):
This proposal did not contain specific suggestions for amending the text of article 2; its purpose was to reserve the right of the United States delegation to return to the issue of scope of application of the Convention during the consideration of article 15.

[Withdrawn: see Consideration, 124, below.]

C. Proceedings in the First Committee

(i) Meetings

122. The First Committee considered article 2 at its 15th and 16th meetings on 12 April 1991.

(ii) Consideration

123. At the 15th meeting, the amendments proposed by Germany (A/CONF.152/C.1/L.8) and Egypt (A/CONF.152/C.1/L.32) were regarded as matters of drafting and referred to the Drafting Committee.

124. At the 16th meeting, the proposal by the United States of America (A/CONF.152/C.1/L.7) was withdrawn. The UNCITRAL text for article 2 was adopted and referred to the Drafting Committee.

Article 13

A. UNCITRAL text

125. The text of article 13 as prepared by the United Nations Commission on International Trade Law provided as follows:

"Article 13

"Contractual stipulations

"(1) Unless otherwise provided in this Convention, any stipulation in a contract concluded by an operator or in any document signed or issued by the operator pursuant to article 4 is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part.

"(2) Notwithstanding the provisions of the preceding paragraph, the operator may agree to increase his responsibilities and obligations under this Convention."

B. Amendments

126. An amendment to article 13 was submitted by Spain (A/CONF.152/C.1/L.22).

127. That amendment was to the following effect:

Delete from paragraph (1) the words "Unless otherwise provided in this Convention".

[Withdrawn: see Consideration, 129, below.]

C. Proceedings in the First Committee

(i) Meetings

128. The First Committee considered article 13 at its 16th meeting on 12 April 1991.

(ii) Consideration

129. At the 16th meeting, the amendment proposed by Spain (A/CONF.152/C.1/L.22) was withdrawn. Australia requested leave to submit an oral proposal; however, an exception was not granted to the requirement of Rule 30 of the Rules of Procedure adopted by the Conference that proposals and amendments shall normally be submitted in writing and copies thereof circulated to all delegations not later than the day preceeding the meeting at which a proposal or amendment is discussed. The UNCITRAL text of article 13 was adopted and referred to the Drafting Committee.

Article 14

A. UNCITRAL text

130. The text of article 14 as prepared by the United Nations Commission on International Trade Law provided as follows:

"Interpretation of the Convention

"In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application."

B. Amendments

131. No amendments to article 14 were submitted.

C. Proceedings in the First Committee

(i) Meetings

132. The First Committee considered article 14 at its 17th meeting on 15th April 1991.

(ii) Consideration

133. The UNCITRAL text for article 14 was adopted and referred to the Drafting Committee.

Article 20

A. UNCITRAL text

134. The text of article 20 as prepared by the United Nations Commission on International Trade Law provided as follows:

"Reservations

"No reservations may be made to this Convention."

B. Amendments

135. Amendments to article 20 were submitted by Netherlands (A/CONF.152/C.1/L.59), Belgium (A/CONF.152/C.1/L.30) and Iran (A/CONF.152/C.1/L.60).

136. Those amendments were to the following effect:

(i) Netherlands (A/CONF.152/C.1/L.59):
Amend article 20 to read as follows:

"(1) Any State may declare at the time of signature, ratification, acceptance, approval or accession that it will restrict the application of the rules of this Convention to certain types of operators of transport terminals.

"(2) No other reservations may be made to this Convention."

[Rejected: see Consideration, 138, below.]

(ii) Belgium (A/CONF.152/C.1/L.30):
Amend article 20 to read as follows:

"(1) Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that it will not apply this Convention in cases where the goods are deposited in an area in which the operator is not in a position to exercise effective control over the goods.

"(2) No other reservations may be made to this Convention."

[Rejected: see Consideration, 138, below.]

(iii) Iran (A/CONF.152/C.1/L.60):
Amend article 20 to read as follows:

"No reservations may be made to this Convention except in the case of an express contradiction with a national law or national laws of a State."

[Rejected: see Consideration, 138, below.]

C. Proceedings in the First Committee

(i) Meetings

137. The First Committee considered article 20 at its 16th meeting on 12 April 1991.

(ii) Consideration

138. At the 16th meeting, the amendment proposed by Netherlands (A/CONF.152/C.1/L.59) was rejected by 5 votes in favour, 18 against and 10 abstentions. The amendment proposed by Belgium (A/CONF.152/C.1/L.30) was rejected by 3 votes in favour, 21 against and 7 abstentions. The amendment proposed by Iran (A/CONF.152/C.1/L.60) was rejected by 2 votes in favour, 23 against and 7 abstentions. The UNCITRAL text for article 20 was adopted and referred to the Drafting Committee.

New Article

139. The United Kingdom proposed (A/CONF.152/C.1/L.48) that the following new article be included in the Convention:

"Competent Jurisdiction

"Any action under this Convention shall only be brought, at the option of the claimant, before one of the courts listed below, provided that such court is located in a State Party to this Convention:

"(a) The court of the place where [the loss, damage or delay occurred] [the transport-related services were performed]; or

"(b) The court of the principal place of business of the defendant."

140. At the 16th meeting on 12 April 1991, the proposed amendment was withdrawn.

III. CONSIDERATION OF DRAFT ARTICLES SUBMITTED BY THE DRAFTING COMMITTEE

141. At its 17th meeting on 15 April 1991, the First Committee considered draft articles 1 to 16 of the draft Convention on the Liability of Operators of Transport Terminals in International Trade, as submitted to the First Committee by the Drafting Committee (A/CONF.152/C.1/L.62). The First Committee referred to the Plenary articles 1 to 16 as set forth in A/CONF.152/11.